IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.217 OF 2006

Akshay Omprakash Kohli & Anr. .. Applicants

versus

M/s.Gulati Co-operative Housing

Society Ltd. & ors .. Respondents

...

Mr.R.D. Soni i/b M/s.Ram & Co. for the applicants.

Mr.Tushar Pimple for the respondent no.1.

CORAM : D.G. KARNIK, J

DATED : 30th November 2006

P.C.:

1. Heard counsel for the appearing parties.

2. This revision application is directed against the order dated 4th February 2006 passed by the learned

Civil Judge, Sr. Division rejecting the applicants application for rejection of the plaint of Order 7 Rule 11 of the Code of Civil Procedure.

3. Respondent no.1 filed a suit against the revision applicants and Pune Municipal Corporation for several reliefs inter alia including a declaration that the building permission no.2385 dated 24th April 2001 granted by the respondent no.4 municipal corporation to the applicant be declared as fraudulent and void. Respondent no.1 also independently claimed a permanent injunction restraining the respondent no.4 and its officers from granting any further building permission in respect of FSI/TDR (i.e. additional Floor Space Index or right to make additional construction by use of Transfer of Development Rights) of the suit property. The revision applicants appeared in the suit but did not file a written statement. They however filed an application under Order 7 Rule 11 alleging that the suit was ex-facie barred by limitation and therefore the plaint be rejected under Order 7 Rule 11 of the Code of Civil Procedure. By order dated 4th February 2006 the court rejected the application. That order is impugned in this appeal.

4. Mr.Soni, learned counsel for the applicant

submitted that principal relief claimed by the respondent no.1 in the suit is a declaration that the building permission no.2385 dated 24th April 2001 should be declared as null and void. He invited my attention to paragraph no.12 of the plaint wherein the respondent no.1 has alleged that he came to know about the illegalness and ultravires of the acts of the defendants, in August 2001. He therefore submitted that suit ought to have been filed within three years as provided in Article 58 of the Limitation Act from the date of the knowledge i.e. from August 2001. The suit which was filed on 23rd June 2005 was ex-facie barred by limitation. Mr.Soni therefore submitted that the plaint ought to have been rejected under clause (d) of Rule 11 of Order 7 of the Code of Civil Procedure.

5. It may be noted that the suit is not only for the relief of declaration that the building permission no. 2385 dated 24th April 2001 - is null and void. The respondent no.1 has further claimed several other reliefs including a relief that the respondent nos.2 to 4 - i.e. the municipal corporation and its officers be restrained from granting any building permission in respect of the FSI/TDR of the suit property. By prayer clause (b), respondent no.1 has claimed an injunction restraining the

municipal corporation from granting fresh building permission. After the lapse of original building permission by passage of time the respondent no.1 is was entitled to contend that fresh building permission should not be granted. Such a relief is an independent relief and not dependant upon the relief of declaration that the first building permission itself is void. The second relief claimed in Part-1 of prayer clause (b) is obviously not barred by any limitation and Mr.Soni was unable to point out any provision of the Limitation Act under which this relief can be said to be barred by limitation.

6. In this view of the matter, assuming that the arguments of Mr.Soni that the prayer clause (a) is barred by limitation to be correct the prayer contained in clause (b) of the prayers in the plaint is not barred by limitation. If a party to the suit files a suit for more than one reliefs and one of the reliefs is barred by limitation that would not mean that the entire suit must fail and it cannot be said that the plaint must be thrown out at the threshold on the ground that one of the reliefs is barred by limitation. If the other relief can be granted, the court would have to consider the other relief on their own merits, and if any of can be granted,

the court would grant it. Such a plaint cannot be thrown out at the threshold under Order 7 Rule 11 of the Code of Civil Procedure.

7. For these reasons there is no merit in the appeal which is hereby dismissed.

(D.G. KARNIK, J)